UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

CONTEMPORARY CARS, INC. D/B/A)	
MERCEDES-BENZ OF ORLANDO AND)	
AUTONATION, INC.,)	
) Charge Nos.	12-CA-26126
and)	12-CA-26233
)	12-CA-26306
INTERNATIONAL ASSOCIATION OF)	12-CA-26354
MACHINISTS AND AEROSPACE)	12-CA-26386
WORKERS, AFL-CIO)	12-CA-26552

RESPONDENTS' EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE

Come now Respondents Contemporary Cars, Inc. d/b/a Mercedes-Benz of Orlando ("MBO") and AutoNation, Inc. ("AutoNation" or collectively "Respondents"), by and through undersigned Counsel, and, pursuant to Section 102.46 of the Board's Rules and Regulations, as amended, file the following exceptions to the Decision ("ALJD") issued by Administrative Law Judge George Carson ("ALJ") on March 18, 2011. For every exception to a finding of fact, the basis for the exception is that it is not supported by the record evidence as a whole. Additional grounds for exceptions are stated as appropriate. The grounds for these exceptions are set forth within Respondent's supporting Brief. With these Exceptions, Respondents hereby request oral argument before the Board.

- I. Respondents except to the ALJ's finding that, "The answers of the Respondents deny any violation of the Act." (ALJD p. 1 (lines unnumbered)).
- II. Respondents except to the ALJ's finding "that many employee witnesses recalled what the Company wanted them to hear rather than what was said." (ALJD p. 4, line 14).

- III. Respondents except to the ALJ's finding that, "General Manager Bob Berryhill initially testified that he learned of the union organizational campaign on October 4 when he was informed that a representation petition had been filed." (ALJD p. 4, lines 33-35).
- IV. Respondents except to the ALJ's finding that Mr. Berryhill's "failure to admit his earlier knowledge of the campaign and the actions that he took weigh heavily against his credibility." (ALJD p. 4, lines 38-39).
- V. Respondents except to the ALJ's finding that, "by maintaining an unlawfully broad rule prohibiting all solicitation on Company property, [they] violated Section 8(a)(1) of the Act." (ALJD p. 5, line 30).
- VI. Respondents except to the ALJ's finding that "General Manager Berryhill learned of the union organizational activity on September 23." (ALJD p. 6, lines 10-11).
- VII. Respondents except to the ALJ's finding that, "Berryhill's admitted questioning employees in his office with Service Director Bullock was coercive." (ALJD p. 6, lines 47-48). VIII. Respondents except to the ALJ's finding that the, "interrogations of Puzon, who had not openly supported the Union, by his direct supervisor were coercive as confirmed by Puzon's unwillingness to reply truthfully that he had been attending union meetings." (ALJD p. 8, lines 7-9).
- IX. Respondents except to the ALJ's finding that, "Respondents, by interrogating employees regarding their union activities, violated Section 8(a)(1) of the Act." (ALJD p. 8, lines 9-10).
- X. Respondents except to the ALJ's finding that "Weiss, subsequent to October 9, did identify Tony Roberts, Brad Meyer, Dean Catalano, Alex Aviles and Ruben Santiago as the individuals that he believed were responsible for the union's organizational effort." (ALJD p. 9, lines 11-14).

- XI. Respondents except to the ALJ's finding that, "Respondents, by soliciting grievances and impliedly promising to remedy them, violated Section 8(a)(1) of the Act. (ALJD p. 10, lines 36-37).
- XII. Respondents except to the ALJ's finding that Brian Davis failed to deny that he interrogated John Persaud. (ALJD p. 13, line 4).
- XIII. Respondents except to the ALJ's finding that "the questioning of Persaud by Davis was coercive." (ALJD p. 13, lines 10-11).
- XIV. Respondents except to the ALJ's finding that, "Respondents, by interrogating employees regarding their union sympathies, violated Section 8(a)(1) of the Act." (ALJD p. 13, lines 11-12).
- XV. Respondents except to the ALJ's finding that credited the "mutually corroborative testimony of Meyer and Puzon who recalled that Berryhill did refer to having heard complaints and that the Company was beginning to 'fix the problems.'" (ALJD p. 14, lines 48-50).
- XVI. Respondents except to the ALJ's finding that, "Davis and Weiss did discuss the demotion of the team leaders and that, in that discussion, Davis referred to a conversation with Cazorla and attributed the demotions to 'the consensus of the suggestion box." (ALJD p. 15, lines 11-13).
- XVII. Respondents except to the ALJ's finding that Respondents violated Section 8(a)(1) of the Act "by informing employees that their grievances with regard to team leaders had been adjusted by "the demotion of the team leaders" in order to induce employees to abandon their support for the Union" violates Section 8(a)(1) of the Act. (ALJD p. 15, lines 15-17).
- XVIII. Respondents except to the ALJ's finding that the seniority of Anthony Roberts was relevant to Respondent MBO's decision to select him for layoff. (ALJD p. 21, lines 35-44).

XIX. Respondents except to the ALJ's finding that former Service Director Art Bullock advised employees that it was "AutoNation's policy that the last one hired would be the first one let go." (ALJD p. 21, Lines 41-42).

XX. Respondents except to the ALJ's finding that, "the selection of Roberts in 2008 was made by Bullock." (ALJD p. 21, Line 43).

XXI. Respondents except to the ALJ's finding that Berryhill "did not deny that [James] Weiss reported Roberts as having been one of the instigators of the union organizational campaign." (ALJD p. 21, lines 50-51).

XXII. Respondents except to the ALJ's finding that, "In a carefully phrased question, counsel for the Respondents asked Berryhill: '[T]o your knowledge, had Mr. Roberts demonstrated any sympathies toward the union in your presence up to that point [his discharge] in time?" (ALJD p. 22, lines 1-3).

XXIII. Respondents except to the ALJ's finding that, "Respondents were aware of the union activities of Roberts." (ALJD p. 22, lines 9-10).

XXIV. Respondents except to the ALJ's finding that "No explanation regarding [Roberts'] alleged unsuitability relative to his productivity was offered." (ALJD p. 22, lines 36-37)

XXV. Respondents except to the ALJ's finding that Berryhill "acted on Bullock's recommendation" with regard to the selection of Roberts for layoff. (ALJD p. 23, line 14).

XXVI. Respondents except to the ALJ's finding, "that Roberts engaged in union activity, and the Respondents were aware of that activity." (ALJD p. 23, lines 20-21).

XXVII. Respondents except to the ALJ's finding that, "Berryhill's identification of Roberts as a troublemaker and instigator of the organizational campaign establish that his protected activities were a substantial and motivating factor for his discharge." (ALJD p. 23, lines 22-24).

XXVIII. Respondents except to the ALJ's finding that, "the General Counsel has carried the burden of proving that union activity was a substantial and motivating factor for Respondent's action." (ALJD p. 23, lines 24-26).

XXIX. Respondents except to the ALJ's finding that Roberts' "productivity confirms that he had" no deficiency in his skills. (ALJD p. 23, lines 38-39).

XXX. Respondents except to the ALJ's finding that, "the failure of Bullock and Makin to testify compels an adverse inference that, had they done so, their testimony would reveal that the Respondents were motivated by animus towards Roberts because of his union activities." (ALJD p. 23, lines 43-45).

XXXI. Respondents except to the ALJ's finding that, "Respondents chose not to make any comparison when selecting a regular service technician for discharge because Roberts would not have been selected." (ALJD p. 24, lines 1-2).

XXXII. Respondents except to the ALJ's finding that, "Respondents have not established that Roberts would have been discharged in the absence of his union activity." (ALJD p. 24, lines 9-10).

XXXIII Respondents except to the ALJ's finding that, "Respondents discharged Roberts because of his union activities and in so doing violated Section 8(a)(3) of the Act. (ALJD p. 24, lines 10-11).

XXXIV. Respondents except to the ALJ's finding that, "Respondents were obligated to bargain with the Union regarding both the decision and the effects of the decision to implement a reduction-in-force." (ALJD p. 24, line 52; p. 25 line 1).

XXXV. Respondents except to the ALJ's finding that, "Respondent had knowledge of the union activities of the four technicians laid off in April." (ALJD p. 25, lines 33-34).

XXXVI. Respondents except to the ALJ's finding that, "On June 23, 2010, when the Supreme Court held that decisions by the two-member Board were void in *New Process Steel, L.P. v. NLRB, supra*, no unique circumstances were created." (ALJD p. 30, lines 14-16).

XXXVII. Respondents except to the ALJ's finding that the Board's amending of the certification date in this case failed to express its "intent to toll MBO's bargaining obligation up to that point in time," and that Footnote 4 to the Board's decision in *Mercedes-Benz of Orlando*, 355 NLRB No. 113 (2010) is inapplicable to the instant case to the extent that, "this was a pending proceeding, not a future proceeding." (ALJD p. 30, lines 24-30).

XXXVIII. Respondents except to the ALJ's finding that the "compelling economic circumstances" exception to the obligation to bargain was inapplicable. (ALJD p. 30, line 49).

XIL. Respondents except to the ALJ's conclusion that, "A compelling economic circumstance justifying a refusal to bargain with regard to the decision to lay off employees and the effects thereof must be 'an unforeseen occurrence having a major economic effect... that requires the company to take immediate action.' [Citations omitted] There was nothing unforeseen here." (ALJD p. 31, lines 4-10).

XL. Respondents except to the ALJ's finding that, "Respondents, by unilaterally laying off Cazorla, Puzon, Poppo and Persaud, violated Section 8(a)(5) of the Act." (ALJD p. 31, lines 10-11).

XLI. Respondents except to the ALJ's finding that, "Respondents, by unilaterally suspending skill level reviews and thereby denying promotions to employees who would have been promoted if those reviews had occurred, violated Section 8(a)(5) of the Act." (ALJD p. 32, lines 37-39).

XLII. Respondents except to the ALJ's finding that, "Respondents, by unilaterally reducing the specified hours for performing prepaid maintenance work, violated Section 8(a)(5) of the Act." (ALJD p. 33, lines 24-25).

XLIII. Respondents except to the ALJ's finding that Respondents violated Section 8(a)(5) of the Act "by failing and refusing to provide the union with requested relevant information regarding unit employees as requested in its letter of April 17, 2009." (ALJD p. 34, lines 3-5).

XLIV. Respondents except to the ALJ's Conclusions of Law in their entirety. (ALJD p. 34, lines 10-29).

XLV. Respondents except to the ALJ's proposed Remedy in its entirety. (ALJD p. 34, lines 31-47; p. 35, lines 1-20).

XLVI. Respondents except to the ALJ's proposed Order, except to the extent that it Orders the dismissal of the Complaint insofar as it alleges violations of the Act not specifically found.

(ALJD p. 35, lines 25-46, p. 36, lines 1-52; p. 37, lines 1-24).

XLVII. Respondents except to the ALJ's proposed Notice to Employees in its entirety. (ALJD App. pp 1-2).

CONCLUSION

Based on the foregoing Exceptions to the Administrative Law Judge's Decision and Respondents' Brief in Support thereof, Respondents respectfully request that the Board reject the Administrative Law Judge's findings of fact and conclusions of law excepted to above, and dismiss the Complaint in its entirety.

A Brief in Support of Exceptions is included with this filing.

Dated this 25th day of April, 2011.

Respectfully submitted,

/s/ Steven M. Bernstein
Steven M. Bernstein
Douglas R. Sullenberger
Brian M. Herman
For Fisher & Phillips LLP

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WORKERS, AFL-CIO,)		
)		
Charging Party.)		

CERTIFICATE OF SERVICE

I hereby certify that on April 25, 2011, I e-filed the foregoing **RESPONDENTS**

CONTEMPORARY CARS, INC. D/B/A MERCEDES-BENZ OF ORLANDO AND

AUTONATION, INC.'S EXCEPTIONS TO THE DECISION OF THE

ADMINISTRATIVE LAW JUDGE with the office of the NLRB's Executive Secretary using the Board's e-filing system and that it was served by electronic mail on the following:

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/s/ Steven M. Bernstein